



CHAIRMAN

Federal Communications Commission

Washington, D.C.

September 15, 2003

02-278

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SEP 29 2003

Federal Communications Commission  
Office of the Secretary

The Honorable Pat Roberts  
United States Senate  
109 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Roberts:

Thank you for your letter of August 14, 2003, regarding the Commission's recent amendment to its rules implementing the Telephone Consumer Protection Act of 1991 ("TCPA"). In your correspondence, you express concern about the Commission's decision requiring written consent before sending advertising faxes.

On September 18, 2002, the Commission released its *Notice of Proposed Rulemaking* ("NPRM") seeking comment on whether it should change its rules that restrict telemarketing calls and unsolicited fax advertisements, and if so, how. Specifically, the *NPRM* sought comment on the effectiveness of the TCPA's unsolicited facsimile advertisement rules, including the Commission's determination that a prior business relationship between a fax sender and recipient establishes the requisite consent to receive advertisements via fax. The Commission received over 6,000 comments from individuals, businesses, and state governments on the TCPA rules.

The record in this proceeding, along with our own enforcement experience, demonstrated that changes in the current rules are warranted, if consumers and businesses are to continue to receive the privacy protections contemplated by the TCPA. As explained in the Commission's *Report and Order* released on July 3, 2003, the record indicated that many consumers and businesses receive faxes they believe they have neither solicited nor given their permission to receive. Consumers emphasized that the burden of receiving hundreds of unsolicited faxes was not just limited to the cost of paper and toner, but includes the time spent reading and disposing of faxes, the time the machine is printing an advertisement and is not operational for other purposes, and the intrusiveness of faxes transmitted at inconvenient times, including in the middle of the night.

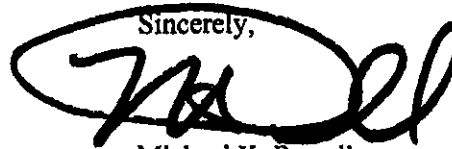
As we explained in the *Report and Order*, the legislative history of the TCPA indicates that one of Congress' primary concerns was to protect the public from bearing the costs of unwanted advertising. Therefore, Congress determined that companies that wish to fax unsolicited advertisements to customers must obtain their express permission to do so before transmitting any faxes to them. The amended rules require all entities that wish to transmit advertisements to a facsimile machine to obtain permission from the recipient in writing.

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The Commission's amended facsimile advertising rules initially were scheduled to go into effect on August 25, 2003. However, based on additional comments received since the adoption of the *July Report and Order*, the Commission, on its own motion, determined to delay the effective date of some of the amended facsimile rules, including the elimination of the established business relationship exemption, until January 1, 2005. The comments filed after the release of the *Report and Order* indicate that many organizations may need additional time to secure this written permission from individuals and businesses to which they fax advertisements. This extension will allow senders of such advertisements additional time to obtain the necessary permission before the new rules become effective. In addition, it will allow the Commission the opportunity to consider any petitions for reconsideration and other filings that may be made on this issue. I am enclosing a copy of the Commission's *Order on Reconsideration*, released on August 18, 2003.

I appreciate your comments. We have placed a copy of your correspondence in the public record for this proceeding. Please do not hesitate to contact me if you have further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Powell", enclosed within a large, hand-drawn oval.

Michael K. Powell

Enclosure

PAT ROBERTS  
KANSAS

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## United States Senate

WASHINGTON, DC 20510-1605

August 14, 2003

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2396

Mr. Michael Powell  
Chairman  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Dear Chairman Powell:

Since the publication of the Federal Communication Commission's new rules and regulations implementing the Telephone Consumer Protection Act (TCPA) in the Federal Register, I have been contacted by many concerned Kansas business leaders. They point out that the FCC's best regulatory intentions in protecting consumers from invasive telemarketing calls have a major unintended consequence that must be corrected.

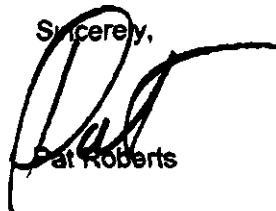
At issue is the final FCC rule that changes the current policy of permitting fax transmissions with established business relationships. The FCC surprised nonprofit associations, local chambers of commerce, and businesses by ruling they cannot use faxes with established business partners without first collecting prior written consent to fax to them.

The FCC failed to recognize the enormous costs and paperwork every business will incur administering this burden with their members, clients and prospective businesses. Moreover, it seems that a flawed FCC rulemaking process denied business groups and associations the opportunity to comment on this particular proposal. Instead of publishing a proposed rule for the regulated community to review and comment on in the Federal Register, the FCC sought guidance on principles to update TCPA regulations and the possible creation of a national "do not call" list. With the release of the final rule last month, many Kansas businesses learned of this burden for the first time. By ignoring established rulemaking procedures, the FCC has set bad public policy

Mr. Chairman, the federal government is supposed to be a partner with constituents and regulated businesses, not an adversary. Unfortunately, the Commission's actions to force associations, nonprofits, and businesses to collect prior written consent for future fax communications (without using a fax machine!) makes the FCC look like a bad actor in this situation. The established business relationship exemption must be reinstated. I urge you to take immediate action.

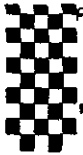
With every best wish,

Sincerely,



Pat Roberts

PR:ky



AUG-14-2003 11:44

PAT ROBERTS  
KANSAS

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SENATOR ROBERTS

202 228 4841

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# United States Senate

WASHINGTON, DC 20510-1605

## OFFICE OF SENATOR PAT ROBERTS

Phone: 202-224-4774

## FACSIMILE

DATE: 8-14-03  
TO: FCC Cong. Affairs TOTAL NO. OF PAGES: 1  
RE: TEPA Rpts on Taxes

### FROM:

Senator Roberts *PR*

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